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AK-CHIN INDIAN COMMUNITY

GOVERNMENT

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HEARING
BEFORE THE
U.S. SENATE
SELECT COMMITTEE ON
INDIAN AFFAIRS

ON

S. 1582

RELATING TO THE SETTLEMENT BETWEEN THE UNITED
STATES AND THE AK-CHIN INDIAN COMMUNITY OF CERTAIN
WATER RIGHT CLAIMS OF SUCH COMMUNITY AGAINST THE
UNITED STATES

JULY 25, 1977

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(II)



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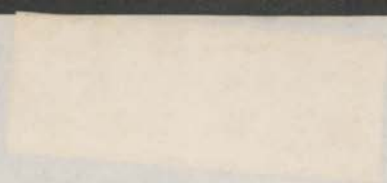
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CERTAIN WATER RIGHTS CLAIMS OF THE AK-CHIN INDIAN COMMUNITY

MONDAY, JULY 25, 1977

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 10:10 a.m., in room 235, Russell Senate Office Building, Hon. James Abourezk (chairman of the committee) presiding.

Present: Senators Abourezk and DeConcini.

Staff present: Alan Parker, chief counsel; Kathryn Harris Tijerina, staff attorney; and Michael Cox, minority counsel.

Senator ABOUREZK. The hearing will be in order.

The purpose of this hearing before the Senate Committee on Indian Affairs is to take testimony on S. 1582. The intent of this bill is to make available a temporary water supply for the Ak-Chin Indian community in central Arizona, until a permanent supply can be delivered. In exchange for the delivery of water, the Ak-Chin Indian community would waive all of its claims against the United States for past failures, as trustee, to assert and protect their water rights.

Within the last 25 years, the Ak-Chin Tribe has had to contend with severe poverty. By 1964, the Ak-Chin Indian community had discontinued the practice of leasing its farm lands to non-Indians and had decided to farm the lands for itself. Careful planning and financing enabled the community to farm 4,900 acres in 1964. In the years since, their profits have risen from a low of \$21,353 in 1964 to over \$1 million in 1976, while farming only 5,000 acres. Because of this amazing story of growth from Federal dependency to self-sufficiency, the Ak-Chin Tribe has been able to build many modern homes for its members and improve their quality of life.

The Ak-Chin people are now before the committee because their way of life may dry up beneath their feet. The issue in S. 1582 is their water crisis—how it may be resolved and at what cost.

The reservation located entirely within Pinal County, Ariz., is approximately 30 miles south of Phoenix. It consists of 21,840 acres of land, all of which is suitable for agriculture, with class A-1 or B-1 soil. Allowing for roads, homes, et cetera, the Interior Department in the past has estimated there are 19,656 practicably irrigable acres on the Ak-Chin reservation, with *Winters* rights of about 90,000 acre-feet of water.

Despite an Executive order, on May 28, 1912, when the U.S. filed notice of appropriation of 70,000 acre-feet per year for the Ak-Chin reservation, none was delivered. Today, because of dams and other

obstructions, the reservation has no surface water supply from which to satisfy its *Winters* rights. To farm, the tribe has had to pump groundwater from the aquifer beneath it.

Non-Indians surrounding the reservation also rely on the groundwater and mine it by intensive pumping. The aquifer has not been able to recharge at the rate of pumped water. The water table at Ak-Chin is dropping 20 feet each year. A secondary effect of the drop is that the land on the reservation has buckled.

This bill is designed to accomplish a temporary settlement for the Ak-Chin while a broader permanent settlement is being forged without extensive and costly litigation.

S. 1582 provides that after 1 year of engineering and hydrological studies, if needed, "to insure a reasonably stable source of ground water which can be taken with minimum adverse effect on the present users of ground water," the Secretary of Interior is authorized to construct, operate, and maintain a well field on Federal lands. He is further authorized to construct and maintain a delivery system from the Federal lands to the Ak-Chin Reservation.

The bill specifies that the Secretary will deliver, until the permanent supply can be delivered, 100,000 acre-feet of Federal ground water. If the Secretary finds there are adverse effects on the basin or that it is damaging others, he is empowered to reduce the amount as low as 70,000 acre-feet.

The water will allow the Ak-Chin Tribe to farm all its practicably irrigable acreage and would resolve their critical water crisis. Further, it helps fulfill the U.S. obligation, with the establishment of the reservation, to provide water to the Ak-Chin Tribe.

There is a provision in section 2 to allow other water users to be compensated for any losses incurred from this act.

Finally, S. 1582 would waive all claims of the Ak-Chin Tribe against the United States for past failure to provide water and for allowing ground water beneath the reservation to be mined by non-Indians.

We will insert in the record a copy of the bill S. 1582, the report of the Department of the Interior, a letter from the Office of Management and Budget, and a statement by Senator Barry Goldwater in support of this bill.

Following that, there will be a statement by Wesley Steiner in support of the bill. Mr. Steiner is on the Arizona Water Commission.

[The material follows:]

95TH CONGRESS
1ST SESSION

S. 1582

IN THE SENATE OF THE UNITED STATES

MAY 23 (legislative day, MAY 18), 1977

MR. DeCONCINI introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

A BILL

Relating to the settlement between the United States and the Ak-Chin Indian community of certain water right claims of such community against the United States.

- 1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*
 3 That (a) the Congress hereby declares that it is the policy
 4 of Congress to resolve, without costly and lengthy litigation,
 5 the claims of the Ak-Chin Indian community for water based
 6 upon failure or alleged failure of the United States to meet
 7 its trust responsibility to the Indian people provided reason-
 8 able settlement can be reached.
- 9 (b) The Congress hereby finds and declares that—
- 10 (1) the Ak-Chin Indian community relies for its

1 economic sustenance on farming, and that ground water,
2 necessary thereto, is declining at a rate which will make
3 it uneconomical to farm within the next few years;

4 (2) at the time of the settlement of the reservation,
5 it was the obligation and intention of the United States to
6 provide water to the Ak-Chin Indian Reservation, and
7 such obligation remains unfulfilled this day;

8 (3) it is likely that the United States would be held
9 liable for its failure to provide water and for allowing
10 ground water beneath the reservation to be mined by
11 nearby non-Indians;

12 (4) this Act is proposed to settle the Ak-Chin
13 Indian community's claim for water by delivering water
14 in exchange for a release of all claims such community
15 has against the United States for failing to act consistently with its trust responsibility in the protection and
16 delivery of the water resources of the community;

17 (5) there exists a critical situation at Ak-Chin in
18 that there is not sufficient economically recoverable
19 ground water beneath the reservation to sustain a farming
20 operation until a permanent source of surface water
21 can be delivered; and

22 (6) that it is the intention of this Act not to discriminate
23 against any non-Indian landowners or other
24 persons, but to fulfill the historic and legal obligation of
25

1 the United States toward the Ak-Chin Indian com-
2 munity.

3 SEC. 2. The Secretary of the Interior (hereinafter
4 referred to as the "Secretary") is authorized and directed to
5 pump and deliver one hundred thousand acre-feet of ground
6 water from nearby Federal lands to the Ak-Chin Indian
7 community to enable the community to farm all its prac-
8 tically irrigable acreage, except that if the Secretary deter-
9 mines that pumping such an amount will (1) significantly
10 damage other interests, or (2) adversely affect ground water
11 basins, the Secretary may deliver less than such one hundred
12 thousand acre-feet but in no event less than seventy thousand
13 acre-feet. Such water shall be delivered annually until such
14 time as a permanent supply of surface water can be delivered,
15 and as such permanent surface water is delivered, the obliga-
16 tion to deliver ground water by this section shall be reduced
17 by a like amount to the end that the delivery of such ground
18 water shall no longer be required. The Secretary is author-
19 ized to receive, consider, and pay and claim received by him
20 arising under this section from water users other than the
21 Ak-Chin Indian community for compensation for any losses
22 or other expenses incurred by such users by reason of the
23 enactment of this Act.

24 SEC. 3. To accomplish the pumping and delivery of
25 water, the Secretary is directed to undertake such engineer-

1 ing and hydrological studies as may be necessary to insure a
2 reasonably stable source of ground water which can be taken
3 with minimum adverse effect on the present users of ground
4 water in nearby areas: *Provided, however,* That such studies
5 shall be completed within one year from the date of the
6 enactment of this Act.

7 SEC. 4. Upon completion of the studies authorized in
8 section 3, but not later than one year from the date of enact-
9 ment of this Act, the Secretary shall enter into a contract or
10 other agreement with the Ak-Chin Indian community pur-
11 suant to which the Secretary shall agree, on behalf of the
12 United States, to take such action as may be necessary to
13 drill, construct, equip, maintain, repair, reconstruct, and
14 operate a well field on such Federal lands. In addition to the
15 drilling, construction, equipping, maintenance, repair, and
16 reconstruction of such wells, the Secretary shall agree to
17 construct and maintain a distribution system, including
18 canals, pumping stations, and other appurtenant works, suf-
19 ficient to provide for the distribution of such water from
20 such Federal lands to the lands comprising the Ak-Chin
21 Indian Reservation.

22 SEC. 5. As consideration for the actions by the Secretary
23 in section 4, the Ak-Chin Indian community would agree
24 effective upon the delivery of one hundred thousand acre-
25 feet of water annually or such amounts as the Secretary

1 determines under section 2 to the reservation, to waive any
2 and all claims which it might have against the United
3 States for the alleged failure of the United States to protect
4 or otherwise assert the water rights of the Ak-Chin Indian
5 Reservation, including both ground water and surface water
6 from time immemorial to the present.

7 SEC. 6. There are hereby authorized to be appropriated
8 such sums as may be necessary to enable the Secretary to
9 carry out the provisions of this Act, and any contract or
10 agreement entered into pursuant to this Act by the Secre-
11 tary with the Ak-Chin Indian community.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUL 22 1977

Honorable James Abourezk
Chairman, Select Committee
on Indian Affairs
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This responds to your request for the views of this Department concerning a bill, S. 1582, "Relating to the settlement between the United States and the Ak-Chin Indian community of certain water right claims of such community against the United States."

We support the purpose of the bill insofar as it attempts to satisfy the legitimate water claims of the Ak-Chin community and to avoid the potentially disastrous depletion of the tribe's present water supply, which could occur within 5 to 8 years according to current projections. We also recognize that water from non-Indian Federal lands may present a viable source to assist in satisfying the needs and rights of the Ak-Chin or of other Indian communities and we therefore support exploring that resource. We do not, however, support the bill as written. We would support a suitably modified bill which would not authorize construction at this time but which would authorize a feasibility study for potential water systems. Such a study should be authorized with a specific time limit to assure timely completion and with a requirement that the study develop a plan for delivery of water to the Ak-Chin. Such a study should be directed at assuring, at a minimum, sustaining the current level of usage, which is estimated at between 25,000 to 30,000 acre-feet. The study should also address potential water availability beyond that amount from Federal lands in the region. The tribe's long-term needs are, of course, being considered in connection with S. 905.

S. 1582 would direct the Secretary of the Interior to pump and deliver 100,000 acre-feet of ground water from nearby Federal lands to the Ak-Chin Indian community to enable the community to farm all practicably irrigable acreage. If the Secretary determined that such pumping would significantly damage other interests or adversely affect ground water basins, he could



deliver less than 100,000 acre-feet but not less than 70,000 acre-feet. Water would have to be delivered annually until a permanent supply of surface water could be provided and the amount of ground water to be delivered would be reduced by the amount of surface water supplied. Claims from other water users could be paid for losses or expenses incurred by reason of this bill. In addition, the Secretary would be directed to undertake and complete within one year, engineering and hydrological studies needed to insure a stable source of ground water which can be taken with minimum adverse impact on present water users. Upon completion of the studies the Secretary would enter into an agreement with the Ak-Chin to take action needed to drill, construct, maintain and operate a well field on such Federal lands, and a distribution system to serve the lands comprising the Ak-Chin Reservation. In consideration therefor, and for delivery of water annually as prescribed by the bill, the Ak-Chin would waive all claims against the United States for failure to protect Ak-Chin water rights, including ground water and surface water.

The Ak-Chin community is a small Indian community located due south of Phoenix, Arizona, which exists on agriculture and which, to date, has been highly successful both agriculturally and financially. In fact they could be considered a model of Indian independence and self-sufficiency. Their farming is entirely dependent upon pumping of ground water. They are already pumping at depths of up to 600 feet. They currently have no natural sources of surface water. For many years now the lands surrounding the reservation have been heavily farmed by non-Indian farmers who have also relied on pumping of ground water for irrigation. The non-Indian lands form a far larger area than the Ak-Chin lands and have been more intensely farmed. Consequently the aquifer underlying the reservation have been constantly overdrawn and according to estimates from reliable sources the Indians' sole source of water could disappear within 5 to 8 years. The intensive ground pumping has also dried up surface water sources that once existed in the area and upon which the Ak-Chin once expected to rely.

The Department fully appreciates the prospective plight of the Ak-Chin community and we believe that given the time it takes to plan and develop Federal water supply systems, now is the time to begin planning. We do not, however, have sufficient information upon which to support authorization for construction, as is provided by S. 1582. The specific Federal lands from which water would be taken have not been identified. We do not know how much water is available from the potential Federal lands or if it is adequate for the purpose. We do not know the costs involved in pumping and

delivery, and cannot know until more specific options are identified. Further, we cannot be sure if water from Federal lands is the best or the only potential source from which to supply the Ak-Chin. (For instance, an option that should be considered is simply to dig deeper wells at the current locations. This may, however, cause unacceptable subsidence). Environmental and other impacts also need to be considered.

There is clearly a need to develop more adequate data before making a decision on how to solve the Ak-Chin water problem or on specific facilities that should be constructed.

In constructing projects of the sort proposed by S. 1582 under Federal Reclamation law, the Secretary is required by law to undertake feasibility studies. Departmental policy and sound practice, as well, dictate that such a study should be conducted. A feasibility study would examine in depth the engineering, environmental, and cost aspects of proposed project development, and would provide a sounder basis for decision. A feasibility-level study should be completed expeditiously. We would support early appropriation of the necessary funds to conduct the study. A time deadline for the study, such as one or two years following appropriation of funds would also be desirable. It would be possible to conduct a study within a year although a quality study would probably take two years. This would still allow for a timely solution to the Ak-Chin problem.

We therefore fully support authorization of a feasibility study but do not support authorization of construction.

In addition to the issue of the available Federal water supplies, there remains to be considered the crucial matter of the amount of water that the Ak-Chin may be legally entitled to. The bill calls for delivery of up to 100,000 acre-feet, with a minimum of 70,000 acre-feet.

At the time the reservation was established in 1912, the United States filed notices of appropriation of 70,000 acre-feet annually of surface and ground water for the use of the tribe. Although storage impoundments and other measures were proposed by Federal officials to insure a water supply, no further action was taken. Since that time those waters have been depleted. The Ak-Chin assert that under the rule of the Winters case, and by virtue of having approximately 20,000 irrigable acres of land on their reservation, they are entitled to between 90,000 and 100,000 acre-feet of water for use on the reservation. At the present time they are farming only 5,000 acres, using about 25,000 to 30,000 acre-feet. The Department is of the view that the Ak-Chin can likely establish a right in the range of 70,000 acre-feet,

although we have not at this time definitively quantified the water rights of this or any other central Arizona tribe. The allocation to the tribe under the Central Arizona Project is 58,000 acre-feet annually through the year 2005, but that is not expected to be available until about 1989.

Although we recognize that the Ak-Chin may be entitled to substantially more water than they are now using, we recommend that, if legislation is developed for a feasibility study, the bill should not require an amount of water that would satisfy a claim of right and should not provide for a settlement.

The Department testified recently before the Select Committee on Indian Affairs concerning S. 905, a bill to settle the water claims of five Central Arizona tribes, including the Ak-Chin. Although we opposed the bill as written, we supported the concept of a legislative settlement of the claims of the 5 tribes and proposed to develop within the Department, and in consultation with the Committee and interested parties, a substitute settlement bill. We have been working diligently on this effort since that time. We believe that the settlement of Ak-Chin claims should be worked out if possible in the context of this effort.

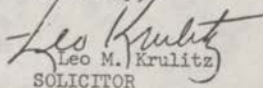
We support separate legislation for the Ak-Chin to study additional water resources because of their special plight of a near-term threat of complete loss of their current water resources. The study of potential Federal or other water sources could contribute to settlement of their claims, but more importantly we view it as an effort to avoid a crisis and to provide at least a sufficient amount of water to maintain their current level of usage; if more can be provided from the sources studied in satisfaction of their rights, we would do so; however, the settlement of claims or rights should be developed in the context of the other bill.

As we have indicated, we do not support S. 1582 as written but we do support authorization of a feasibility study.

We would be pleased to provide assistance to modify S. 1582 or develop substitute provisions to provide for an appropriate feasibility study.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,


Leo M. Krulitz
SOLICITOR



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JUL 26 1977

Honorable James Abourezk
Chairman, Select Committee
on Indian Affairs
United States Senate
5331 New Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request for the views of the Office of Management and Budget on S. 1582, a bill, "Relating to the settlement between the United States and the Ak-Chin Indian community of certain water right claims of such community against the United States."

For reasons stated in the report sent to you by the Department of the Interior, the Office of Management and Budget recommends against enactment of S. 1582, as currently written. However, we would support a suitably modified bill which would not authorize construction at this time, but which would authorize a feasibility study for potential water systems.

Sincerely,

(signed) James M. Frey

James M. Frey
Assistant Director for
Legislative Reference

STATEMENT OF SENATOR BARRY GOLDWATER OF ARIZONA
FOR THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

July 25, 1977

Ak Chin Indian Water Needs

Mr. Chairman, it is my pleasure to support the bill introduced by my colleague from Arizona, Senator DeConcini, on behalf of the Ak Chin Indians.

My endorsement of the bill is conditioned upon acceptance of two amendments which I shall describe in just a moment. But, first, Mr. Chairman, let me tell you why I strongly support the general provisions of the bill and urge that you act favorably upon the Ak Chin's request for assistance in obtaining an immediate water supply to meet their essential needs.

Mr. Chairman, the Ak Chin Indians deserve the highest commendation we can give them for the great self-help efforts they have made to maintain their economic independence. The Ak Chin people have been very successful in staying off of government welfare rolls and in standing on their own feet.

For example, the Tribal Council has done its best to provide regular governmental services to members of the Indian Community. It offers free transportation to hospitals and clinics, provides police protection, and even provides street lights and electrical power, entirely out of farming revenues.

These results have occurred under an unheralded, but tremendously successful farm enterprise operated by the Indian people. I am referring to the Ak Chin Farms, which provides the overall management direction for their community's farming operations.

Page 2

This Indian-initiated effort has:

- Provided employment for 80% of the tribal work force.
- Enabled the construction of new homes for Indian Community Members.
- Built a Community Center which offers an impressive range of health, education and other community services.
- Purchased special mobile homes for the handicapped and the elderly.
- Acquired and operated a supermarket to provide food to the Community people at cost, helping to improve their nutritional intake.

In other words, Mr. Chairman, thanks to this self-initiated and managed farming operation, the Indian Community has been able to promote the well-being of its members, and unemployment has become virtually non-existent among the people.

All of this success, and the great sense of pride that it has brought to the Indian people, are threatened with destruction, however, because of the precipitous fall in the ground water level beneath the Reservation. In fact, the Indians claim that their ground water is dropping at the alarming rate of 20 feet per year.

As a result, they can farm only 5,000 acres of their land, whereas there is an unquestioned potential for farming in excess of 10,000 acres.

The question is, how long can this situation continue and still permit the Ak Chin to farm? At best, the Indians estimate that they can look forward to no more than five to seven years of profitable farming due to the rapidly deteriorating ground water situation. In any event, the outcome is certain; this

Page 3

proud and self-reliant Indian people will be forced to abandon their traditional livelihood and many of the members of the Community may be forced onto the welfare rolls, unless corrective steps are taken.

Therefore, Mr. Chairman, I believe it is most important that we find a way to assist the Indians in helping themselves. And, if we can do this without forcing recourse to very expensive and time-consuming legal suits which the Indians could bring in pursuit of their water rights claims, we will have eliminated a serious legal cloud from Indians and non-Indians in Arizona.

To this end, I support legislation which provides for geologic and geophysical studies, and the drilling and testing of test wells, leading to the location of ground water supplies which could provide a source of water to meet the needs of the Ak Chin Community until additional waters, most likely from the Central Arizona Project, become available to the Indians.

Such studies and drilling is provided for in the bill at government expense, and I believe it is both appropriate and necessary in order to fulfill the obligations of the United States toward the Ak Chin Indian Community.

Another provision of the bill would authorize an appropriation of funds to construct a canal (probably closed pipes), pumping stations, and accompanying facilities to deliver the water to Ak Chin for farming purposes. This is an essential part of the legislation, but I believe the provision should be changed to represent the actual hydrological facts, whatever they may be.

Page 4

As it stands, section 2 of the bill mandates that the Secretary of the Interior pump and deliver from 70,000 to 100,000 acre feet of ground water from the discovered sources to the Ak Chin Indian Reservation, even if "the Secretary determines that pumping such an amount will (1) significantly damage other interests, or (2) adversely affect ground water basins."

Section 2 requires the Secretary to make a determination of the impact of the proposed pumping upon other water users and adjacent water basins, but it specifically provides that no matter what his conclusions are, in no event shall less than 70,000 acre feet be delivered.

While I am told that most interested parties who have considered the legislation assume some water can be developed in nearby areas, I have difficulty understanding the proposal to direct the Secretary to pump and deliver a minimum amount of ground water before such an operation is found to be feasible. How can Congress direct something that might not be hydrologically, or even economically, feasible?

Accordingly, I support amendments which others have proposed to the Committee directing the Secretary to pump and deliver such quantities of water "as he finds feasible" as a result of the studies called for in section 3 of the bill. Until the studies are completed, I do not believe that the legislation should include a minimum acre foot delivery figure.

Second, I support amendments which others will propose to the Committee to waive all claims that the Ak Chin Indian Community may have against private and State interests as well as against the United States, for both past and current damages.

Page 5

A major feature of the bill is its purpose of solving the legal problems in a negotiated, legislative manner, rather than leaving these issues for litigation; and I believe logic and equity both demand that all legal claims be specifically resolved that arise out of the decline in the Ak Chin's ground water whether this involves the United States as trustee, or private or State parties as water users.

In this connection, I would also raise the question of whether or not section 5 should be revised so as to clarify that these legal problems will be settled even if the proposed minimum of 70,000 acre feet is not found to be available for delivery to the Reservation. I am not making a recommendation as to how to answer this question, but do wish to point out that a serious problem does occur under section 5 relative to what the legal situation will be if less than 70,000 acre feet of water is pumped and delivered under the bill to the Ak Chin Indian Community.

Let us assume that after the expenditure of several millions of dollars on wells, it is discovered that 60,000 acre feet of ground water can be pumped and delivered annually to the Reservation, or even 65,000, but that there is no way 70,000 acre feet can be so delivered. What happens under section 5? Is the Indian Community required to waive any of its possible claims at all or can it receive the 60-or 65,000 acre feet without any obligation to waive any of its claims as to water rights? Clearly, this question should be answered in the bill without being left for future interpretation.

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Another question arises out of section 2 of the bill. A part of this section requires that when "a permanent supply of surface water can be delivered" to the Reservation, the obligation to deliver ground water under the bill shall be reduced by a like amount. Just making the assumption that this contingency should happen, and further assuming that ground water still remains available in the discovered sites for delivery, what happens to that water and the pumping and delivery system?

If it is no longer required for delivery to the Ak Chin Reservation, do the rights revert to the United States for use as it determines? Again, I do not propose to suggest an answer, but merely to request that the Committee address the issue and settle it before the contingency may arise.

Mr. Chairman, in conclusion, I commend you on holding the hearing and I urge your speedy and favorable action on the proposal.

KEL FOX, CH.
JOHN L. LEIBER, V. CH.
WESLEY E. STEINER
EXECUTIVE DIRECTOR
AND
STATE WATER ENGINEER
VICKIE MOONEY
SECRETARY



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July 12, 1977

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Honorable James Abourezk
Chairman, Senate Committee on
Indian Affairs
1105 Dirksen Office Bldg.
Washington, DC 20510

RE: S. 1582

Dear Senator Abourezk:

I regret that prior commitments prevent a personal appearance to testify in support of S. 1582, legislation intended to provide supplemental water supplies to the AkChin Indian Community and to settle their water rights claims.

In its statement to the Senate Committee on Indian Affairs on May 24, 1977, the Arizona Water Commission took the position that the legislative solution to the water rights claims of the five central Arizona tribes "should be built around the Secretary's CAP allocations to the five tribes and should seek means of maintaining the level of those allocations after year 2005 through supplementary works." In this regard we advocated, amongst other programs, that the Congress enact legislation and appropriate funds to develop the groundwater supplies available to the reservations and directing "the Secretary to investigate ways of developing new supplies to maintain CAP allocations to the reservations following year 2005 at the levels that will prevail during the first 20 years."

In furtherance of this approach, we specifically urged that the Congress pass the legislation that Senator DeConcini introduced that same day in behalf of the AkChin Reservation, authorizing and directing the Secretary of the Interior to investigate and develop where feasible well fields on neighboring public lands for the benefit of the reservation.

We take this opportunity to reiterate that support for the AkChin legislation.

Honorable James Abourezk

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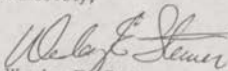
July 12, 1977

We would suggest two amendments to S. 1582 - First, revision of Section 2 to direct the Secretary to pump and deliver such quantities of water as he finds feasible as a result of the studies called for in Section 3, but limited to a maximum of 100,000 acre-feet per year. The amount of water that can be reasonably delivered to the AkChin Reservation from public lands within a practicable distance of the reservation is unknown at this point in time and the program should not be invalidated in the event that the Secretary finds that a quantity less than 70,000 acre-feet per annum but still of beneficial magnitude is all that can be developed.

Second, may we suggest that Section 4 be amended to waive all claims that the AkChin Reservation might have against private interests as well as against the United States.

Thank you for the opportunity to comment in support of S. 1582. I would respectfully request that this letter be made a part of the official record of the hearings.

Sincerely,



Wesley E. Steiner
State Water Engineer & Executive
Director
Arizona Water Commission

cc: Gov. Castro
Sen. Dennis DeConcini
Sen. Barry Goldwater
Cong. Morris Udall
Burton Hirsch

Senator ABOUREZK. Our first witness this morning will be Mr. Leo Krulitz, Solicitor for the Department of the Interior.

STATEMENT OF LEO M. KRULITZ, SOLICITOR, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY JOSEPH R. MEMBRINO AND MICHAEL CLINTON, RESOURCE PLANNING OFFICER, BUREAU OF RECLAMATION

Mr. KRULITZ. Mr. Chairman, I am pleased to appear before you today to discuss S. 1582, "Relating to the settlement between the United States and the Ak-Chin Indian community of certain water right claims of such community against the United States."

We support the purpose of the bill insofar as it attempts to satisfy the legitimate water claims of the Ak-Chin community and to avoid the potentially disastrous depletion of the tribe's present water supply, which could occur within 5 to 8 years according to current projections. We also recognize that water from non-Indian Federal lands may present a viable source to assist in satisfying the needs and rights of the Ak-Chin or of other Indian communities, and we therefore support exploring that resource.

We do not, however, support the bill as written. We would support a suitably modified bill which would not authorize construction at this time but which would authorize a feasibility study for potential water systems. Such a study should be authorized with a specific time limit to assure timely completion and with a requirement that the study develop a plan for delivery of water to the Ak-Chin.

Such a study should be directed at assuring, at a minimum, sustaining the current level of usage, which is estimated at between 25,000 to 30,000 acre-feet. The study should also address potential water availability beyond that amount from Federal lands in the region. The longer range water problems of the Ak-Chin are, of course, being considered in connection with work on S. 905.

The Ak-Chin community is a small Indian community located due south of Phoenix, Ariz., which exists on agriculture and which, to date, has been highly successful both agriculturally and financially. In fact, they could be considered a model of Indian independence and self-sufficiency. Their farming is entirely dependent upon pumping of ground water. They are already pumping at depths of up to 600 feet.

They currently have no natural sources of surface water. For many years now the lands surrounding the reservation have been heavily farmed by non-Indian farmers who have also relied on pumping of ground water for irrigation. The non-Indian lands form a far larger area than the Ak-Chin lands and have been more intensely farmed. Consequently, the aquifer underlying the reservation has been constantly overdrawn and, according to estimates from reliable sources, the Indians' sole source of water could disappear within 5 to 8 years.

The intensive ground pumping has also dried up surface water sources that once existed in the area and upon which the Ak-Chin once expected to rely.

The Department fully appreciates the prospective plight of the Ak-Chin community, and we believe that, given the time it takes to plan and develop Federal water supply systems, now is the time to begin planning. We do not, however, have sufficient information

upon which to support authorization for construction as is provided by S. 1582.

The specific Federal lands from which water would be taken have not been identified. We do not know how much water is available from the potential Federal lands or if it is adequate for the purpose. We do not know the costs involved in pumping and delivery, and cannot know until more specific options are identified. Further, we cannot be sure if water from Federal lands is the best or the only potential source from which to supply the Ak-Chin. Environmental and other impacts also need to be considered.

There is clearly a need to develop more adequate data before making a decision on how to solve the Ak-Chin water problem or on specific facilities that should be constructed.

A feasibility study would examine in depth the engineering, environmental, and cost aspects of proposed project development, and would provide a sounder basis for decision. A feasibility-level study should be completed expeditiously. We would support early appropriation of the necessary funds to conduct the study. A time deadline for the study, such as 1 or 2 years following appropriation of funds would also be desirable. It would be possible to conduct a study within 1 year although a quality study would probably take 2 years. This would still allow for a timely solution to the Ak-Chin problem.

In addition to the issue of the available Federal water supplies, there remains to be considered the crucial matter of the amount of water that the Ak-Chin may be legally entitled to. The bill calls for delivery of up to 100,000 acre-feet, with a minimum of 70,000 acre-feet.

At the time the reservation was established in 1912, the United States filed notices of appropriation of 70,000 acre-feet annually of surface and ground water for the use of the tribe. Although storage impoundments and other measures were proposed by Federal officials to insure a water supply, no further action was taken. Since that time, those waters have been depleted.

The Ak-Chin assert that, under the rule of the *Winters* case, and by virtue of having approximately 20,000 irrigable acres of land on their reservation, they are entitled to between 90,000 and 100,000 acre-feet of water for use on the reservation. At the present time, they are farming only 5,000 acres, using about 25,000 to 30,000 acre-feet.

The Department is of the view that the Ak-Chin can likely establish a right in the range of 70,000 acre-feet, although we have not at this time definitively quantified the water rights of this or any other central Arizona tribe. The allocation to the tribe under the central Arizona project is 58,300 acre-feet annually through the year 2005, but that is not expected to be available until about 1989.

Although we recognize that the Ak-Chin may be entitled to substantially more water than they are now using, we recommend that, if legislation is developed for a feasibility study, the bill should not require an amount of water that would satisfy a claim of right and should not provide for a settlement.

The Department testified recently before the Select Committee on Indian Affairs concerning S. 905, a bill to settle the water claims of five central Arizona tribes, including the Ak-Chin. Although we opposed the bill as written, we supported the concept of a legislative

settlement of the claims of the five tribes and proposed to develop within the Department, and in consultation with the committee and interested parties, a substitute settlement bill.

We have been working diligently on this effort since that time. We believe that the settlement of Ak-Chin claims should be worked out if possible in the context of this effort.

We support separate legislation for the Ak-Chin to study additional water resources because of their special plight of a near-term threat of complete loss of their current water resources. The study of potential Federal or other water sources could contribute to settlement of their claims, but more importantly we view it as an effort to avoid a crisis and to provide at least a sufficient amount of water to maintain their current level of usage. If more can be provided from the sources studied in satisfaction of their rights, we would do so. However, the settlement of claims or rights should be developed in the context of the other bill.

We would be pleased to work with the committee to modify S. 1582 or develop substitute provisions to provide for an appropriate feasibility study.

This concludes my formal testimony. I would be pleased to answer any questions that you or Senator DeConcini might have.

Senator ABOUREZK. Thank you, Mr. Krulitz.

You are asking for a feasibility study in advance of authorization or do you think the project ought to be authorized in the same legislation that a feasibility study is authorized?

Mr. KRULITZ. Mr. Chairman, I believe generally that a feasibility study would normally precede the authorization appropriation. Until we are able to identify the Federal land where water may be available and satisfy ourselves that the quality of the water is satisfactory to meet the tribe's needs, it is difficult to know the parameters of the project. All of that would be developed in the feasibility study.

Senator ABOUREZK. If you are recommending a feasibility study, there is obviously a question in the minds of the Department of the Interior as to whether any water can be found. That is the purpose of the feasibility study.

Is that correct?

Mr. KRULITZ. A feasibility study would identify the water resources available, but would also deal with the economics of the project.

Senator ABOUREZK. Once again, by definition, a feasibility study is to determine whether such a project is feasible, economically and physically.

Mr. KRULITZ. Right.

Senator ABOUREZK. If you find, through such feasibility study, that, through some formula that you might use, it is not economically feasible, what alternatives do you have prepared?

Mr. KRULITZ. If it were to turn out there was no feasible way to do this, there would be two alternatives. One would be to proceed with the litigation which is now contemplated against the surrounding users.

A second alternative would be in the context of S. 905, by which we are trying to come to a final and permanent solution to the tribe's water rights. If it is not feasible to take water from Federal lands, there may be other ways to deliver the water to the tribe, which we believe they are entitled to.

Senator ABOUREZK. To give the tribe some reassurance: Could you not include in this bill a feasibility study with an alternative course of action in the event the project was found not to be feasible?

I think it would concern the tribe if you left that sort of question mark hanging in this legislation. I cannot say that I have talked to the tribe about it. I am just saying how I would feel if I were the tribal official involved.

Mr. KRULITZ. Mr. Chairman, we are committed to helping the tribe find a short-term solution to a very critical problem.

Senator ABOUREZK. An emergency water supply.

Mr. KRULITZ. Yes, sir.

Senator ABOUREZK. Where do you plan to bring that from?

Mr. KRULITZ. We will be looking at ground water in the Federal lands to the west of the reservation. There are indications that there is water in the area of Waterman Wash. There may be waters on the gunnery range out there. How we are going to deal with that, I am not sure.

We were trying to find out this morning the extent to which the Geological Survey has data on the gunnery range. It turns out that the data is less adequate for the gunnery range than anywhere else, but that is understandable.

Senator ABOUREZK. Would you object to a bill that would provide that kind of an alternative that would authorize: (1) a feasibility study, (2) would authorize a project, depending on the outcome of the feasibility study, and (3) an alternative in the event the original does not work according to the feasibility study?

Mr. KRULITZ. I believe that would be satisfactory, Mr. Chairman.

We really do want to explore other alternatives here. It may be possible, for example, by increasing the number of wells on the reservation itself, as an interim aid, to tap more of the water there. That may turn out to be a more feasible way of solving the short-term problem.

Senator ABOUREZK. I think your objective of furnishing around 100,000 acre-feet ought to be the clear principle stated in the bill. How that is done ought to be a secondary matter. I think you ought to be entitled to some discretion.

Mr. KRULITZ. One of our concerns, Mr. Chairman, is that. The reason we have talked in terms of maintaining their existing supply, as compared to developing ground water for up to 70,000 or 100,000 acre-feet, is that it does not make sense to us to build a temporary water delivery system of that magnitude—if it is only going to be temporary—when, at the same time, we are trying to find a long-term solution which presumably will be a combination of surface water and perhaps ground water as well.

In other words, it does not make economic sense, on the face of it, to build a system to solve the total problem when the system is only temporary. We might have to build something else to satisfy the long-term needs.

Senator ABOUREZK. Do you have a figure available to you now as to the cost of water that would be economically feasible in this kind of a project? Or would you have to develop that with the Bureau of Reclamation?

Mr. KRULITZ. We would have to develop that, Mr. Chairman.

Senator ABOUREZK. Mike Clinton is here. Would he be able to tell us whether that is feasible, to give us a figure on what the cost would be now, as to how you determine the feasibility?

Mr. CLINTON. I am Michael Clinton. I am Resource Planning Officer for the Bureau of Reclamation.

Senator ABOUREZK. Mr. Clinton, how are we going to know before you do your study what figure you are going to have to arrive at before you determine whether this project would be economically feasible or not? Do you have a figure that you can give us on how much on an acre-foot you would spend before you would—

Mr. CLINTON. I do not have a figure I can give you off the top of my head. I can describe the procedure we would use. Generally, when the Bureau of Reclamation goes in to plan a project, we do an evaluation of the benefits and costs associated therewith.

Senator ABOUREZK. What discount rate do you use?

Mr. CLINTON. Under our present procedures it is 6½ percent.

What we do is look at the net farm income. That is the measure of benefits that we use to offset the costs.

In Indian projects, there are certain additional benefits that accrue to Indian reservations. Under Reclamation's procedures, we are not allowed to use those, particularly the Levitt Act writeoff, which allows the tribes to plow back a certain amount of their revenues into the project rather than retain them. Also, the unemployed and underemployed labor resources in Indian tribes provide substantial additional benefits.

The Bureau of Indian Affairs has those authorities. They could allow us to use those additional benefits in justifying our project.

Senator ABOUREZK. We could also put those in this legislation; couldn't we?

Mr. KRULITZ. Yes, sir.

Senator ABOUREZK. It would be in addition to a lower discount rate.

Mr. CLINTON. Yes.

Mr. KRULITZ. Yes.

Senator ABOUREZK. So, you do not really have a figure you can give. You have to go through the procedure, depending upon what variables you use in your formula. Is that essentially correct?

Mr. CLINTON. That is true. Also, should we find a project infeasible because of economic reasons, there have been times in the past when the Department recommended authorization of "infeasible projects" because of other extenuating circumstances.

Once the findings are made, then it could be referred to Congress for a decision.

Senator ABOUREZK. You are preparing litigation against non-Indian water users in the area at this time. Is that correct, Mr. Krulitz?

Mr. KRULITZ. Yes; Mr. Chairman.

Senator ABOUREZK. What is the status of those lawsuits now?

Mr. KRULITZ. As you know, there is litigation now pending in the Tucson area. Litigation is in preparation with regard to the Ak-Chin.

Joe Membrino may know what the status of the case is.

Mr. MEMBRINO. The Department is recommending to the Justice Department that litigation be brought on behalf of the Ak-Chin Indian community to curtail the pumping of the farmers adjacent to the reservation.

The litigation report is in the Justice Department now. We are developing a service list that will be submitted to the Justice Department.

Senator ABOUREZK. When do you expect the lawsuits to be served and filed?

Mr. MEMBRINO. I am told by our field office that the development of the list is nearly completed, but I am just not sure. It must be within the next couple of months. It is a very long process.

Senator ABOUREZK. So, within 2 months you expect to have it filed and served?

Mr. MEMBRINO. I would like to think so.

Senator ABOUREZK. This bill calls for delivery of 100,000 acre-feet, but no less than 70,000. Would you agree that, as a settlement figure, the tribe has a legal entitlement to water in that range from 70,000 to 100,000 acre-feet?

Mr. KRULITZ. Mr. Chairman, we have done a considerable amount of work on the tribe's rights. The consultant that was retained, I believe, estimated the virgin flows, both surface and ground water, for the Ak-Chins at about 78,000 acre-feet. There are some complexities with regard to their water rights to the extent that it relies on ground water.

I do not think that the courts have definitively or authoritatively applied the *Winters* rights doctrine to ground water. But we are confident that that makes sense. Additionally, the river that originally went through the reservation is a river that flows in some places and does not flow in other places. That complicates their right to surface water.

We have said in the testimony, and I think it is correct, that somewhere in the 70,000-plus range is where it is. They do have irrigable land that can support up to 100,000. So, 70,000 to 100,000 I think is the right range of their legal entitlement. At least, that is what we would be asserting in court.

Senator ABOUREZK. You have stated that there is a need to develop additional water supplies for the Ak-Chin community, and sooner than the CAP can be expected to deliver any water. Would it be fair to say that the administration is committed to developing a water supply system for Ak-Chin regardless of whether this bill or similar legislation is enacted by Congress?

Mr. KRULITZ. Well, Mr. Chairman, OMB cleared my report. It certainly is the Department's position and, we would hope, the administration's position as well.

Senator ABOUREZK. Understanding that passage of any legislation, including this legislation, is sometimes uncertain, in view of your acknowledgment of the needs for the Ak-Chin community for water: Does the administration have any plans to seek an early appropriation for the necessary feasibility studies?

Mr. KRULITZ. We are prepared to proceed with a request for an appropriation for the feasibility study. We estimate the potential cost at somewhere between \$500,000 and \$800,000. It depends a little bit upon the data that we have available.

Senator ABOUREZK. Can you appropriate without additional authorization? Do you have whatever authorization you need?

Mr. KRULITZ. Mr. Chairman, I really do not know the answer to that question. I would have to find out.

We will check and find out whether or not we need a separate authorization.

[Subsequent to the hearing the following information was received.]

It is our opinion that there is sufficient existing authority upon which to base such a request.

The Snyder Act, 25 U.S.C. § 13 authorizes the Bureau of Indian Affairs, under the supervision of the Secretary of the Interior to expend moneys of for the benefit, care and assistance of Indians throughout the United States "[f]or the extension, improvement, operation, and maintenance of existing irrigation systems and for the development of water supplies."

The authority to seek appropriations is coextensive with § 13 authorization to expend moneys. Since the development of water supplies is an expressly authorized activity under the Snyder Act, we do not feel that further authorization is needed to support a request for funds to do a feasibility study for Ak-Chin.

Senator DeCONCINI. Excuse me, Mr. Chairman.

You do not mean authorization, do you, Mr. Krulitz? You mean appropriations?

Mr. KRULITZ. An appropriation for the feasibility study; right.

My guess is that it might be possible to include it in the supplemental at some point.

Senator ABOUREZK. In your opinion, would passage of S. 1582 and its enactment interfere with or otherwise disrupt the work on an alternative to S. 905?

Mr. KRULITZ. The present bill calls for the Secretary to enter into an agreement with the tribe, which would extinguish their claims. It may be possible to dovetail the two.

The enactment of this bill, to the extent that it provides for the extinguishment of those claims, would need to be carefully looked at. Until we identified how we are going to satisfy the tribe's water rights, I am sure they would not want to relinquish their claims.

This bill does obligate the Government to provide that amount of water. The two could probably be made consistent. As we look at it, each one has a different purpose.

Senator ABOUREZK. I do not have any more questions.

I want to thank you very much for your appearance and your testimony in favor of the proposal as modified.

Mr. KRULITZ. Thank you, Mr. Chairman.

Senator ABOUREZK. Senator DeConcini is our next witness. He is the sponsor and author of this bill.

STATEMENT OF HON. DENNIS DeCONCINI, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator DeCONCINI. Mr. Chairman, thank you very much.

First let me comment on Mr. Krulitz' participation in these very, very critical problems we are facing in Arizona in the non-Indian as well as the Indian spheres. I cannot compliment him enough for giving it his personal attention and the time that he has spent in Arizona talking to Indian agricultural interests and non-Indian agricultural interests.

It is a pleasure to find a department that is indeed willing to attempt to understand both sides—if you must use that particular phrase—of the water problem involved in Arizona.

I want to thank you, Mr. Chairman, for conducting hearings on S. 1582 in such a timely fashion. Acting in such a responsive manner to the water crisis faced by the Ak-Chin Indian community and the effect this crisis will have on the non-Indian farmers in the surrounding area is to the committee's credit indeed.

This bill, which I introduced, proposes to resolve—without protracted, costly, and socially disruptive litigation—the Ak-Chin Indian community's water claims which are based upon the contention that the United States failed to meet its trust responsibility to these Indian people.

Specifically, this would be accomplished by mandating the Secretary of the Interior to pump and deliver at least 70,000 acre-feet of water, and as much as 100,000 acre-feet annually from nearby Federal lands to the Ak-Chin Indian Reservation, where the community is located.

Such water would be delivered until a permanent supply of surface water is made available to the community, at which time the community would agree that the obligation to deliver water by this act shall be reduced proportionately as the permanent surface source of water is provided to the end that the water authorized pursuant to this act is no longer required.

The bill further directs the Secretary of the Interior, within 1 year from the date of enactment of this act, to undertake the necessary engineering and hydrological studies to insure that a stable source of groundwater is available in nearby areas, and that such water can be pumped and delivered to the community with minimum adverse effects on present users of that water.

Following completion of the foregoing studies, the Secretary is directed to enter into a contract or appropriate agreement with the Ak-Chin Indian community in which the Secretary would agree, on behalf of the United States, to drill the necessary number of wells to meet the water commitment in this act; and to construct a distribution system to insure delivery of the water from the Federal lands to the lands comprising the Ak-Chin Indian Reservation.

In consideration for the effective delivery of at least 70,000 acre-feet of water annually to the reservation, my bill provides that the Ak-Chin Indian community will agree to waive all claims against the United States based upon the contention that the trustees failed to protect or assert the water rights of the Ak-Chin Indian Reservation, including both groundwater and surface water from time immemorial to the present.

Finally, the proposed measure authorizes the appropriation of such sums as may be necessary to permit the Secretary to carry out the provisions of this act.

It is an established fact that the reservation's groundwater is declining at an alarming rate. There is also no question that the continued viability of farming on the Ak-Chin Reservation is limited by usable available water. The position of the community is that the diminution of its groundwater and the failure of the United States to protect the tribal water resources have given rise to five separate causes of action as follows:

First—an action by the community against the United States for past damage to the community resulting from the failure of the

United States to protect water resources and to make them available to the community;

Second—an action by the community against the United States for failing to currently provide water to the reservation;

Third—an action by the United States, as trustee on behalf of the community, against individuals pumping groundwater in surrounding areas, including the Maricopa-Stanfield Irrigation District, for past damages resulting from their pumping which caused outflow of water from beneath the reservation;

Fourth—an action by the United States, as trustee for the community, against individuals pumping groundwater in the aquifer to cause them to stop pumping water which affects groundwater beneath the reservation; and

Fifth—an action by the United States, as trustee for the community, to quantify the water resources to which the community is entitled as a result of the *Winters* case, *Arizona v. California*, and the *Capaert* case.

If this measure is enacted into law, it would preclude action by the United States against non-Indian farmers surrounding the reservation to force them to cease pumping; and it would also preclude claims by the Ak-Chin people against the United States for failing to currently provide water. The delivery of water would obviate the possibility of successfully maintaining either type of litigation.

In addition, the legislation specifically releases the United States from any claims which may be asserted by Ak-Chin against the United States for past damages.

If the legislation becomes a reality, the subject of quantification of water rights will have also been settled. Thus, of the five causes of action, only one remains; that is, litigation by the United States as trustee against non-Indian farmers for past damages.

This cause of action is not released by the legislation as presently proposed. However, the community has assured me that, for what it conceives to be adequate consideration, such as S. 1582 or similar legislation, an amendment that would release the one remaining claim would be in order.

The Federal Government, as trustee for the Indians, has only limited alternatives at its disposal in addressing the Ak-Chin Reservation's water crisis. In my view, the only viable alternative is a negotiated legislative settlement. This approach presents an opportunity for all parties—Federal Government, Indians, and non-Indians—to fashion a solution based on concessions.

I believe there are persuasive legal and moral arguments to support my decision to opt for the negotiated legislative settlement. The increasing number of ancient Indian claims relating to land and other natural resources being advanced by the Indian community are creating serious conflicts between Indians and their non-Indian neighbors.

Given the Federal Government's role in the area of Federal/Indian relations, the Congress has an obligation to fulfill its responsibility, and where the circumstances warrant, resolve such conflicts through legislation rather than disruptive litigation. I am hopeful that the Ak-Chin issue might well serve as a model for others to follow when faced with similar circumstances.

Mr. Chairman, there are many ramifications to Arizona's water problems, ramifications that threaten the future development of our State. For example, I recently received a letter from the executive vice president of the Continental Bank in Phoenix which clearly shows that we must resolve our water problems.

The Philadelphia Savings Fund Society, the largest savings bank in the world, has invested in excess of \$100 million in Arizona. The Continental Bank in Phoenix was advised by the Philadelphia group that it would no longer consider loans in Arizona because of the many uncertainties surrounding our water problems.

The Williamsburgh Savings Bank, a \$2 billion organization headquartered in Brooklyn, N.Y., which has invested more than \$50 million in our State, has indicated that it is in the process of re-evaluating its loan policies as well. They recognize that water is critical to the State's future. Not only is water in short supply, but there is the threat of continuous disruptive litigation between Indians and non-Indians over water. In such an environment of uncertainty, investment decisions are difficult to make.

The legislation being discussed today will not solve Arizona's problems. But, if passed, it will move in that direction. And it is particularly important that the resolution be primarily within the legislative arena and not the courts.

In conclusion, I believe the hearing process will clarify the issues and possible problems contained in this bill so corrective amendments can be considered during markup.

Mr. Chairman, I will be glad to answer any questions you or your staff might have.

Senator ABOUREZK. Thank you very much, Senator.

I want to make a little response to your opening statement with regard to the Solicitor for the Interior Department. I am particularly happy to see a Solicitor who finally takes his responsibility seriously.

While he is in the room, we ought to compliment him. I really mean that.

I have battled for over 4½ years now with Solicitors for the Department of Interior on various issues. I am particularly pleased that Mr. Krulitz has seen fit to take his responsibilities at their utmost in seriousness.

I am also pleased to see a Senator from a State that has an Indian population, taking that Indian population seriously and not demagoguing on the issue as many politicians are wont to do.

So, I appreciate the work that you have done, Senator DeConcini, and the interest you have taken.

I do not have any questions. Many things were straightened out while Mr. Krulitz was testifying. I am happy that you were here to hear that.

Feel free to comment on the modifications he has proposed and agreed to.

Senator DECONCINI. Mr. Chairman, I am glad you mentioned that. I will take just a minute.

I can appreciate the position of the Solicitor and the Department because, obviously, you would like to be certain that the availability is there. What does concern me is this. I am very concerned with the problem of litigation and the nondiscriminatory effects or lessening

effects that legislation would have, adverse to what might come forth from litigation. I am very, very concerned that the non-Indian agricultural interests might be severely legally discriminated against through litigation.

Some agricultural interests will not support even my proposal.

The reason the bill is drawn in such a manner to mandate the Department to move forward is to place on the record that it is the responsibility of the Department to find the water supply and deliver it to this particular Indian reservation, as it may be to many others.

When we started working on this bill, the Ak-Chin were very positive in their position legally and as to the amount of water. They believe that 100,000 acre-feet is the minimal amount. They now pump between 25,000 and 30,000. They have been allocated some 58,000 acre-feet. This is a minimum of 70,000—perhaps as much as 100,000.

It shows a spirit on their part. They are willing to modify their demands to resolve the litigable actions that may be pending from the standpoint of some of the non-Indian agricultural community. They certainly see the benefit of this rather than these potential five causes of action going to court, maybe winning and maybe not winning.

It is time, in my opinion, for the Department to bite that bullet of the longstanding obligation and take it upon themselves to find that water resource.

I think it is there. I wish I could say that it was simple and that you could just go out and point to this valley or to that area and come up with that amount of water. I believe that if the Department was directed and told that they had to do it, they could find a minimum of 70,000 acre-feet and perhaps more.

Senator ABOUREZK. I have no other questions.

I want to express my thanks for your testimony.

Senator DeCONCINI. Thank you, Mr. Chairman.

Senator ABOUREZK. Our next witness is Mr. John E. Smith, president of the Maricopa-Stanfield Irrigation and Drainage District.

Mr. Smith, I would like to welcome you to the committee hearings.

STATEMENT OF JOHN E. SMITH, PRESIDENT, MARICOPA-STANFIELD IRRIGATION AND DRAINAGE DISTRICT, PHOENIX, ARIZ.

Mr. SMITH. Mr. Chairman, my name is John Smith. I am a farmer. I live in Arizona.

I am the president of the Maricopa-Stanfield Irrigation District.

You have before you for consideration Senate bill 1582 introduced by Senator Dennis DeConcini of the State of Arizona. The board of directors of Maricopa-Stanfield Irrigation and Drainage District has been requested to give you its views upon this legislation.

The Maricopa-Stanfield Irrigation and Drainage District is an irrigation district formed in 1962 under the laws of the State of Arizona. This district was essentially formed for the purpose of being able to contract with the Secretary of Interior for Colorado River water delivered into central Arizona by the central Arizona project. This district is located in Pinal County, Ariz., south of the Gila River and the Gila River Reservation. The northern boundary of the district is approximately 35 miles south of the Phoenix area and about 5 miles south of the Gila River.

The district contains 147,655 total acres, of which 137,175 acres are patented—in private ownership—and 10,490 acres belong to the State of Arizona. Of these lands, 116,195 acres have a recent history of irrigation as that is defined in the Central Arizona Project Act, being 108,475 acres of patented land and 6,720 acres of State land.

Within the exterior boundaries of the district, but not included within the district, is the Maricopa Ak-Chin Indian Reservation. This reservation contains 21,840 acres and was created by an Executive order dated May 28, 1912. Of the 21,840 acres within the reservation, approximately 5,000 acres are presently being farmed.

Neither the district, its non-Indian farmer members, nor the Ak-Chins, receive any surface water other than infrequent flood flows of the normally dry Santa Cruz River, Santa Rosa and Vekol Washes which are of very little, if any, economic value.

All farming, both within the boundaries of the district and on the Indian reservation, is done by pumping the underground percolating water by means of deep wells. The static water level in these wells has been falling, thereby increasing the costs of obtaining water. In some instances, this increased cost has led some of the non-Indian farms to go out of cultivation. This prospect still remains for those currently in business unless some relief is found.

Insofar as the district is concerned, the only alternative source of water available to the district is water to be delivered through the central Arizona project. The district has previously filed a letter of intent to contract for water with the Secretary of Interior. It is presently pursuing this letter of intent with the proper authorities. The Secretary of Interior has not announced any allocation of central Arizona project agricultural water for non-Indian applicants.

The Secretary of Interior, however, has made an allocation to the Maricopa Ak-Chin Indian Reservation. His allocation amounts to 58,300 acre-feet per year. In addition to that, the Maricopa Ak-Chin Indian Reservation is to receive water if the Kennedy bill is enacted into law. If the Kennedy bill is enacted into law and the Ak-Chin receive their allocation of central Arizona project water, the Ak-Chin would receive over 100,000 acre-feet of surface water per year, or roughly 5 acre-feet for each acre of the reservation.

There is no question that the underground percolating water which is relied upon by both the Ak-Chin and the non-Indian farmers is not sufficient to sustain the existing rate of pumping for an indefinite period. In recent years, litigation has been threatened between the Indians and the non-Indian farmers as to the law governing underground percolating water.

These threats have been given more impetus by virtue of the decision of the U.S. Supreme Court in *United States v. Cappaert*. Further, while the deadline for filing claims by Indian tribes is being extended, the district and its representatives have been informed that the Ak-Chin do intend to file such a lawsuit.

I think that should have said the Department of Justice instead of the Ak-Chin.

The Indians base their claim upon a filing by the Secretary of Interior of a "Notice of Appropriation of Surface and Underground Water from the Santa Cruz River and Santa Rosa Wash" in the amount of 60,000 acre-feet per year and from the Vekol Wash in the

amount of 10,000 acre-feet per year. This notice was filed within 10 days after creation of the reservation in 1912.

However, since 1907, it has been the law of the State of Arizona that underground percolating water is not subject to appropriation and that such water belongs to the owner of the overlying land. *Howard v. Perrin*, 8 Ariz. 342, affirmed 26 U.S. 195. Further, it should be pointed out that at the time the Secretary filed his "notice of appropriation," there were numerous appropriations of record on the Santa Cruz River, including, but not limited to, the following filings in Pinal County, Arizona:

Black Mountain Reservoir, March 16, 1910, 3,000 sec. feet; Santa Cruz Reservoir, June 3, 1909, 3,000 sec. feet; Santa Cruz Reservoir, October 14, 1909, 3,000 sec. feet; and Santa Cruz Reservoir, June 3, 1909, 3,000 sec. feet; and prior appropriations in Pima and Santa Cruz County of a minimum of 10,000 acre-feet.

The source for that data is "Report Upon the Santa Cruz Reservoir Project", by P. E. Fuller, consulting electrical, mechanical and hydraulic engineer, June 11, 1913.

In addition to these prior appropriations, there is also pending in the U.S. District Court for the District of Arizona a lawsuit brought by or on behalf of the Papago Indian Tribe to waters of the Santa Cruz River as well as underground water.

It could be argued that the claims of the Papago Tribe will have a significant impact upon any claim of the Ak-Chin Tribe. The same could hold true if the Gila Indian River community brings a similar lawsuit, since both reservations were established prior to the establishment of the Ak-Chin Reservation.

The district does not agree that the Ak-Chins have a valid claim to the underground water other than what their rights would be under Arizona law. However, the district recognizes that, if the claims of the Ak-Chin to underground water are to be upheld, it will take costly and time consuming litigation which would be a burden to all and leave both parties in doubt as to their respective rights to the underground water until a final decision was reached.

Further, it is obvious that the Secretary of Interior did not follow through on the filing of the "Notice of appropriation" for the Ak-Chin. If this is a violation of his trust obligation—upon which the district expresses no opinion—then it is the position of the district that the Ak-Chin should be made whole and that the obligation to do so is the obligation of the Federal Government and not the obligation of the parties in the immediate area who have built, through blood, sweat and tears, this desert land into a highly productive farming community.

For these reasons we support a legislative solution to this matter and we support the principles contained in the DeConcini bill.

It is our understanding that the proposed well field authorized by the DeConcini bill will be located on Federal land to the west of the Ak-Chin Reservation, either in the vicinity of Vekol Valley or at the headwaters of Waterman Wash. The district expresses no opinion as to the availability of 70,000 to 100,000 acre-feet of water per year from these sources.

The district further expresses no opinion as to whether or not the pumping of this quantity of water from these sources could be done "without significant damage to other interests" or "adverse effect upon

other groundwater basins." It is the position of Maricopa-Stanfield Irrigation and Drainage District that, if other interests are significantly damaged or there is substantial adverse effect upon other groundwater basins as a result of the pump fields, the pump field will be operated only if the other interests so affected are fully compensated for any damages.

If this can be done, then the bringing of this water to the Ak-Chin Reservation would be, in the opinion of the district, full compensation to the Ak-Chin Indians for the claimed neglect of the Secretary of Interior to preserve the value of any rights created at the time of the establishment of the reservation.

This should, together with water allocated to the reservation by the Secretary from the central Arizona project, be ample to place in cultivation all reasonably irrigable land on the reservation and should insure to the Ak-Chin Indian community and their descendants an abundant and secure supply.

For this reason, it is the position of the district that section 5 of the bill should be amended so as to make it clear that the delivery of water to the Ak-Chin Indian community under this bill would result in a full and complete settlement of any and all rights, claims or causes of action not only against the Secretary of the Interior, but also against the non-Indian farmers and other water users off the reservation as a result of their having pumped and used the underground water underlying their lands and continuing to do so in the future.

With such an amendment, and subject to the reservations above pointed out, the Maricopa-Stanfield Irrigation and Drainage District wholeheartedly supports Senate bill 1582 and recommends its enactment.

Thank you for the opportunity to appear today and testify. I hope the comments of my district will be of assistance to the committee. To further assist the committee concerning the waiver provision of section 5 of the bill, we have drafted a proposed amendment which we offer to you now. The amendment would make it clear that delivery of water under the bill would result in a full and complete settlement of all claims of the Ak-Chin community. We feel that such a provision is vital.

I will be happy to answer any questions you may have or supply you with additional information if that becomes necessary.

Mr. Chairman, we talked this over with the legal counsel of the Ak-Chin community.

Senator ABOUREZK. Did they concur with that?

Mr. SMITH. Yes. He is here. I think he can speak for himself better than I can.

Senator ABOUREZK. Mr. Smith, we are very grateful for your appearance and your testimony. It is a valuable contribution because we want to know how people feel about legislation in the local area.

I think, without question, you represent people living in that surrounding area that are non-Indian; is that correct?

Mr. SMITH. Yes; the Ak-Chin Tribe and the farmers in the area have a long history of cooperation. We get along very well. Our kids all go to the same school and play on the same ball clubs. We get along well with each other.

I would like to make a comment or two, if I may, Senator, on the administration position.

Senator ABOUREZK. Certainly.

Mr. SMITH. With respect to them, I do not feel that their position is the solution to the problem.

1. They propose a legal solution, perhaps, which, if the Ak-Chin lost, would certainly leave them in a weaker position concerning their rights.

2. They propose a lesser amount of water—20,000 or 30,000 acre-feet—which would not settle the Ak-Chin's claims. It would not settle their legal position. So, it would not settle the problem at all.

Senator ABOUREZK. You think it ought to be a full 100,000?

Mr. SMITH. Well, something in the neighborhood of the 70,000. They claim that, if they are going to do anything at all, they should do it properly and settle the problem. Otherwise, the problem is like it is.

They also propose, perhaps, as I understood them, more wells. That is just like throwing gasoline on a fire. You have got a problem, so, to solve it, you create more of the problem by putting more wells there and putting them in deeper. Then we put in more wells and put them in deeper. That does not solve the problem at all.

Senator ABOUREZK. Thank you very much.

Mr. SMITH. Thank you, Senator.

Senator ABOUREZK. We appreciate your appearance, Mr. Smith.

The next witness is Mr. Wilbert J. Carlyle, chairman of the Maricopa Ak-Chin Indian Community.

Mr. Carlyle, I would like to welcome you to the hearings. If you have somebody with you who you would like to introduce, please go ahead.

STATEMENT OF WILBERT J. CARLYLE, CHAIRMAN, MARICOPA AK-CHIN INDIAN COMMUNITY, ACCOMPANIED BY LEONA KAKAR, AK-CHIN COUNCIL SECRETARY-TREASURER; VERA SANTOS, VICE CHAIRPERSON; GENE FRANZOY, ENGINEER; AND BURTON G. HIRSCH, ATTORNEY

Mr. CARLYLE. Thank you, Mr. Chairman, staff, and guests. My name is Wilbert Carlyle.

Let me first introduce the members of the council that are here with me. Vera Santos is vice chairperson, and Leona Kakar is Ak-Chin Council secretary-treasurer. We also have several students from the reservation we have brought here as a high school graduation gift.

In addition, we have with us Mr. Gene Franzoy, an engineer specializing in irrigation, and our attorney, Mr. Burton G. Hirsch. We are, I believe, prepared to answer your questions.

I should like to take this opportunity to thank Senator DeConcini for his active support of this bill and to thank this committee and its staff for the excellent cooperation we have received.

Mr. CHAIRMAN, it is my intention to make my testimony as brief as possible and to answer questions the committee may have. To accomplish this, I would ask that my testimony before this committee, given during the hearings on Senate bill 905, be made a part of this record or placed in the official files of the committee for these proceedings.

Senator ABOUREZK. Both that and your prepared statement will be made a part of the record.

[The material follows:]

STATEMENT
OF
AK - CHIN INDIAN COMMUNITY

Before the Senate Select Committee
on Indian Affairs

Hearings on S.B. 1582

July 25, 1977

Presented By:

Wilbert J. Carlyle, Chairman

Assisted By:

Burton G. Hirsch, Attorney-at-law

Mr. Chairman, Members and Guests:

Let me first introduce the members of the Council of the Ak-Chin Indian Community who are present for these hearings.

Leona Kakar

Vera Santos

We also have several students from the reservation we have brought here as a high school graduation gift. In addition, we have with us Mr. Gene Franzoy, an engineer specializing in irrigation, and our attorney, Mr. Burton G. Hirsch. We are, I believe, prepared to answer your questions.

I should like to take this opportunity to thank Senator DeConcini for his active support of this bill and to thank this Committee and its staff for the excellent cooperation we have received.

Mr. Chairman, it is my intention to make my testimony as brief as possible and to answer questions the Committee may have. To accomplish this, I would ask that my testimony before this Committee given during the hearings on Senate Bill 905 be made a part of this record or placed in the official files of the Committee for these proceedings.

The history of Ak-Chin is well documented in that record, as is the nature of our water problem. I do not intend to burden this record with repetition. Through our own efforts, we have achieved a small measure of success and independence. Last year alone, farming only 5,000 of the over 20,000 farmable acres on our reservation, we earned over \$1 million. Due to the declining ground water table, two critical things have occurred: pump costs have skyrocketed, cutting into profits severely, and ground water which used to flow under the reservation from the South is now flowing out from under the reservation to the South.

Ten days after the reservation was created in 1912, the United States clearly expressed its intention to provide us with at least 70,000 acre feet of water annually from sources which no longer exist. Our situation is so desperate 63 years later that unless we have water we cannot continue to live as we have learned to live. We, as well as the United States, can file lawsuits to get this water and damages as well, but frankly we feel a legislative settlement benefits all parties; our Indian Community, the United States, and nearby non-Indians.

The Community benefits because a legislative solution can be implemented and water delivered long before costly and disruptive lawsuits can be resolved, and because we value highly the relationship we now enjoy with our non-Indian neighbors.

The United States benefits because it will not have to prosecute a costly and complicated lawsuit on our behalf; because it will not be exposed to the payment of past and future damages for what we believe to be a breach of its trust responsibility; and most important, because the government will have significantly contributed to the continued economic independence and pride of our Indian Community.

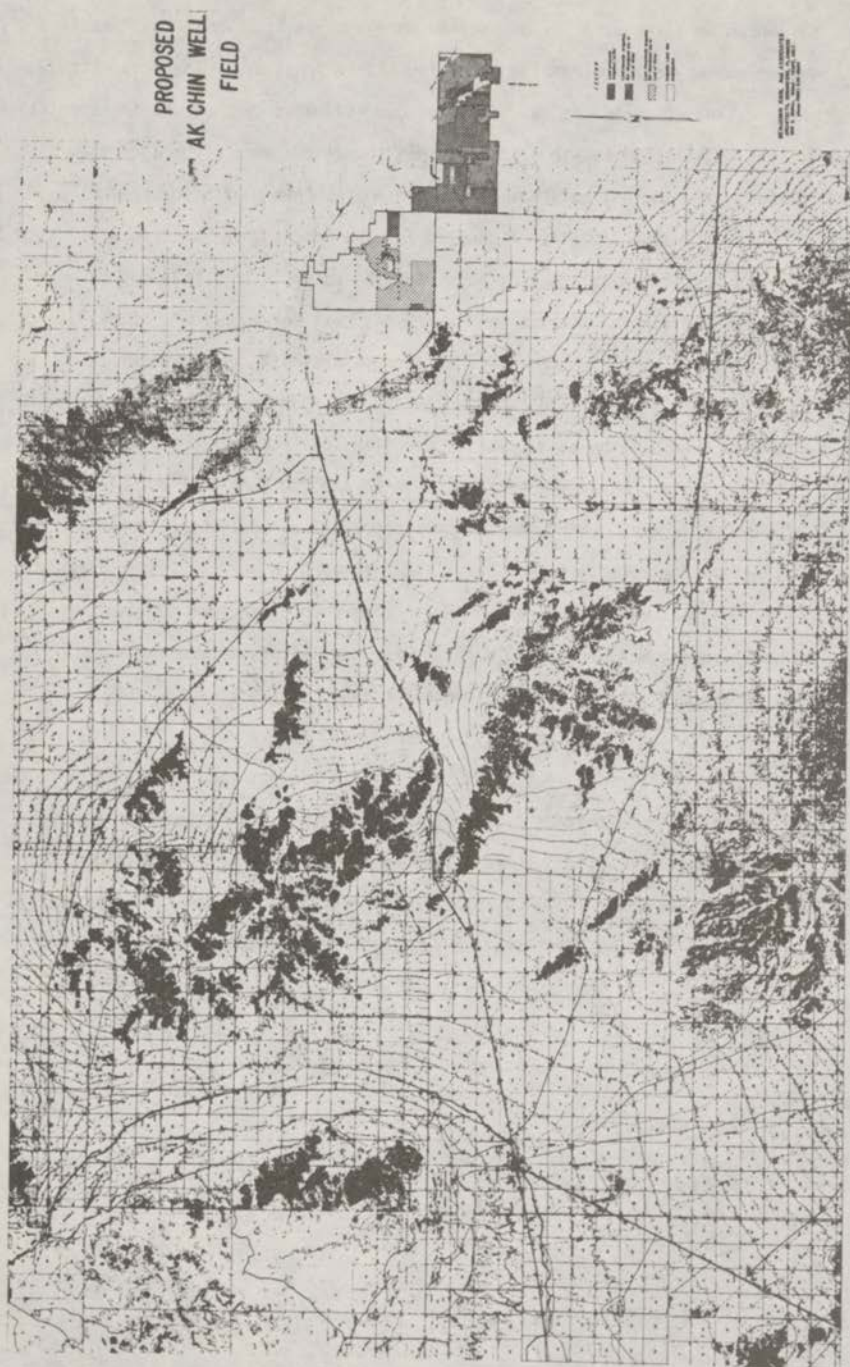
The non-Indians benefit because implementation of the bill would bring new water into the general area, and would eliminate the necessity of Ak-Chin's present pumping. In addition, continued pumping by non-Indians could not legally constitute an infringement on our water supply if we are getting water from an alternative source.

With all these benefits there must be some detriments; there are! Ground water is a limited resource. To the extent it is mined from any aquifer already being overdrafted it is not readily replaced. We would

be consuming a resource, as opposed to merely using it. While this result is not one we feel desirable, we do feel it is necessary. There is also the question of cost. As you will see, our estimated cost of the implementation of this legislation is significantly less than the amount of damages the United States would likely have to pay to the Ak-Chin people for breach of its trust responsibility. Ignoring for the moment that fact, we will show you that the total cost of acquiring the water in this bill can be less per acre foot of water than our present cost per acre foot. Finally, although there will be some effect on farmers presently mining water in aquifers where a well field is established, our hydrologists tell us the effect on them will be so minimal as to be insignificant.

To farm our farmable acres we need 100,000 acre feet of water delivered annually. Later, as the bill proposes, we would hope to have that water from some surface supply. In the meantime our need is so immediate and urgent that only pumped ground water can reach us in time to save our economy and our way of life. In return for that water, we would gladly give up any and all claims we have against the United States for all its past acts and more important, its omissions.

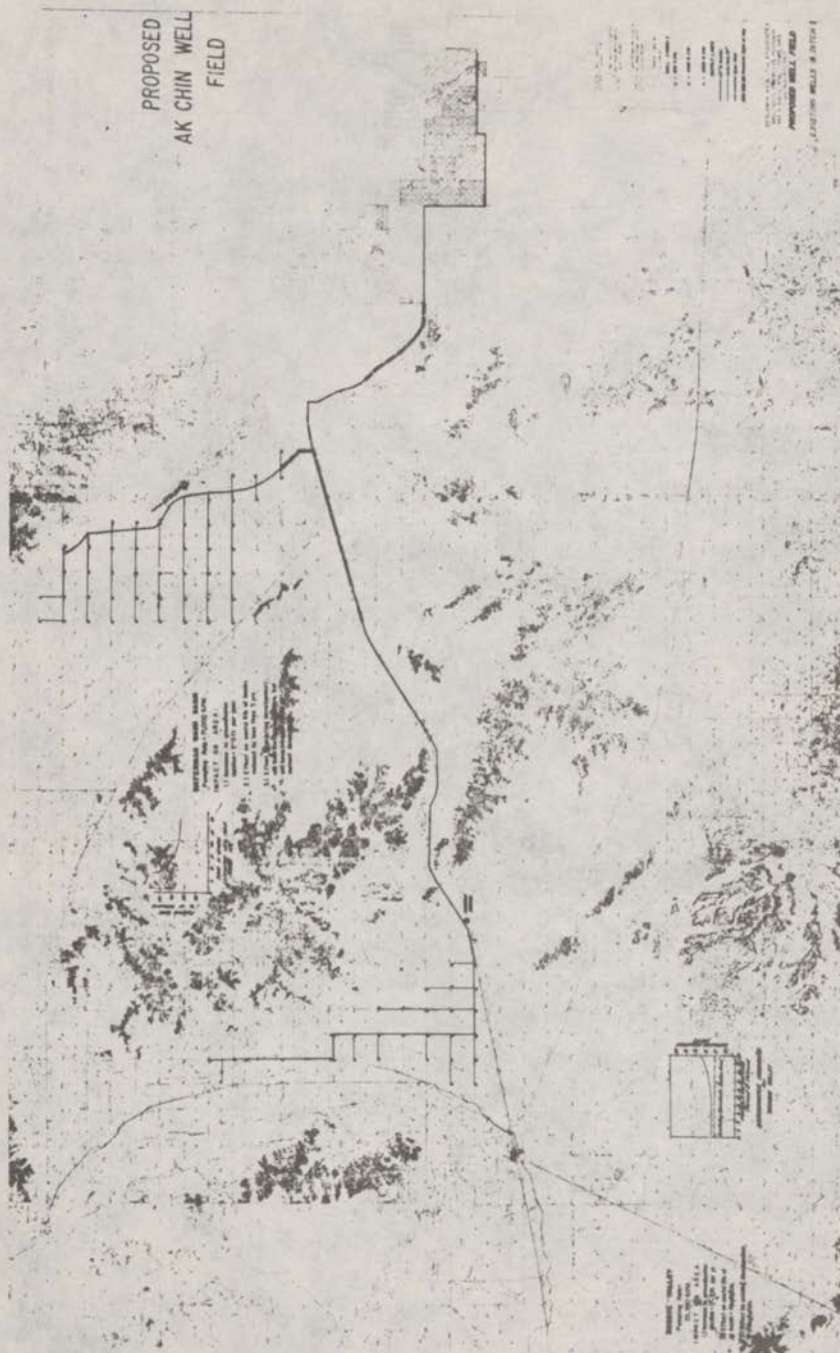
Mr. Chairman, as you can see, we have brought some graphs to depict what we hope this bill will accomplish, as well as some information of our present situation. I would like to ask our attorney to explain these graphs to you. If you or other Members of the Committee have any questions, I feel confident that we can either answer them or provide answers to you in a short period of time.



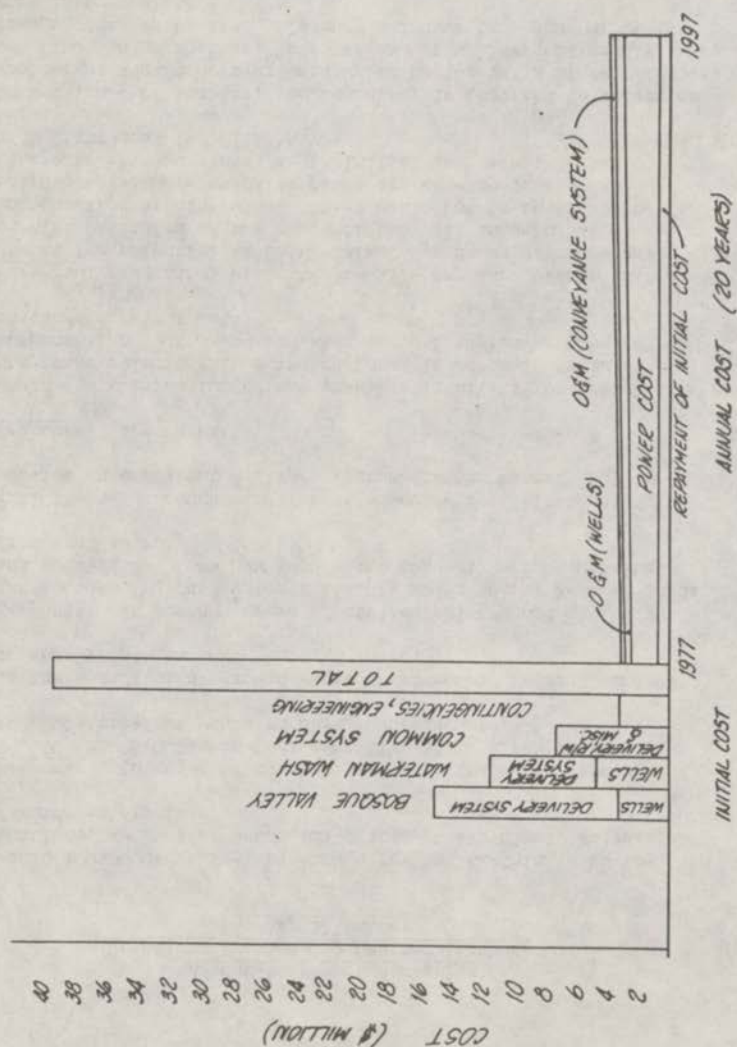
PROPOSED
AK CHIN WELL
FIELD



12. 10. 1964



AK CHIN WELL FIELD COST SUMMARY



S. 1582

Addendum to Report Answering
Questions Proposed by Senator Abourezk
in July 11 Letter

1. Would 100,000 acre-feet be enough for the Ak-Chin tribe to continue, as Senator DeConcini stated, their highly successful farming enterprises?

Response: In terms of current usage, estimated at between 25,000 and 30,000 acre-feet annually, it is clear that 100,000 acre-feet would be more than adequate.

2. Is there sufficient ground water under nearby Federal lands to supply that amount?

Response: We are not aware of studies which would quantify the amount of ground water available under nearby Federal lands, and thus do not know how much water annually can be obtained from that source.

3. Will there be enough time for an adequate feasibility study to provide an efficient delivery system for the water?

Response: See report.

4. Would the elimination of any possible liability for breach of the trust relationship outweigh possible costs in terms of compensation to non-Indian water users incurred by the enactment of this Act?

Response: We cannot estimate possible exposure of the United States for potential Ak-Chin claims. Nor do we yet have any careful estimates of the costs of the bill in terms of compensation or otherwise. These could not be obtained, of course, until more specific plans are developed. Indian interests have suggested as an initial estimate that the bill might cost \$45 million.

5. In Section 2 of the Act, the Secretary is required to determine whether he should deliver less water on the basis of two factors, one of which is whether, "such an amount will significantly damage other interests." Is such a factor too vague or otherwise inappropriate?

Response: We have recommended that this bill not undertake settlement of the Ak-Chin water rights claims in light of

Consequently we would recommend deletion of section 2. We do believe, however, that the term "significantly damage" is very subjective and vague and would undoubtedly lead to questions when determining the amount of water to provide to the Ak-Chin tribe.

MR. CARLYLE. Two questions were asked by the committee on July 11, 1977.

1. Is the amount of water defined and its method of delivery adequate for the needs of the Ak-Chin Community?

To farm our farmable acres, we need 100,000 acre-feet of water annually. That is the amount we seek. There is no existing delivery system for that water. Our need is so immediate and urgent that only pumped groundwater can reach us in time to save our economy and our way of life. Later, since groundwater will eventually be exhausted or uneconomical, we seek that water from a permanent surface supply.

2. In return, is the tribe willing to waive all claims against the United States for failure of its fiduciary obligation to protect and assert all water rights from time immemorial to the present?

The answer to that, simply, is yes.

Mr. Chairman, as you can see, we have brought some graphs to show what we hope this bill will accomplish, as well as some information of our present situation. I would like to ask our attorney to explain these graphs to you.

If you or other members of the committee have any questions, I feel confident that we can either answer them or provide answers to you in a short period of time.

Mr. Chairman, I think we can clear up a lot of these questions that you have during the course of the presentation of these graphs and other materials we might have.

Senator ABOUREZK. Let me ask one question before I forget it.

The proposed amendment by Mr. Smith of the irrigation district down there—either you or your attorney can answer this—have you discussed that amendment with him, and do you agree with that amendment?

Mr. HIRSCH. Mr. Chairman, if I may respond, we have discussed it with him. We agree with the wording of the amendment. Its insertion would be, we feel, contingent upon passage of the bill as presently proposed.

If there is to be other amendments during markup, we would reserve the right to negotiate that provision.

We have made a statement to Senator DeConcini and assured him, as he alluded to in his testimony, that, under appropriate circumstances for what we conceive to be adequate consideration, we would be willing to waive those claims.

Senator ABOUREZK. I think, for your protection, you would have to have that language in the bill in addition to language saying that this will take effect when the irrigation project is completed.

I do not think a promise of a project is sufficient. I think that the completion of the project should activate the language.

Mr. Smith, if you are still here, would you agree with that?

Mr. SMITH. Yes.

Mr. HIRSCH. Senator, I think the bill as drafted contemplates a contract between the Secretary and the tribe. Of course, any relinquishment of claims would be contingent upon fruition of the contract. That would resolve that issue.

Senator ABOUREZK. Please proceed.

Mr. HIRSCH. I think you are generally oriented on this chart I show you as to where the reservation is. The city of Phoenix would be off the top of the map—just about directly above the reservation.

We have identified on the reservation four different kinds of land. The green cross-hatched area is the land that is presently being irrigated as of 1976. For the most part, it is what we refer to as the southern section of the reservation, with the exception of one small piece.

The brown area with lines across it is the area that could be irrigated virtually overnight. It is level. It might need a little bit of touchup work, but it has been irrigated and abandoned only because of the lack of water.

The land with dots on it and the brown hatch on the north section of the reservation is land that has been historically irrigated and abandoned due to lack of water, but which land would require more than just a minimal touchup to reactivate it. For example, field ditches in that area have deteriorated with time and would need to be either reworked or poured.

The white area is area conducive to subjugation. It has not been subjugated. We are talking about somewhere in the neighborhood of 12,000 to 13,000 acres of land with the colored areas which can be put in with very minimal effort or a little more effort in some cases.

In the white areas, we are talking about lands that could be put under cultivation by simply putting in water and working on the ditches and a little bit of field effort.

This first overlay shows the existing wells and ditch system currently existing on the reservation. The flow of the water in those ditches generally starts at the southeast corner and moves in a north-west direction. The ditches going almost due west carry the water west. The ditches heading north carry the water north.

The wells are indicated on there in terms of both gallons per minute of output and by color, in terms of their anticipated useful life. I counted them before. If I remember correctly, I think there are five or six wells in the entire reservation that have an anticipated useful life in excess of 10 years. Most of the wells on the reservation will be out long before that time.

The second overlay shows the proposed system that we would use to deliver water from both Waterman Wash and Bosque Valley. We have done as much homework as we can, Mr. Chairman, and I think that we can assure this committee that there is sufficient water, without any question, in Waterman Wash and Bosque Valley.

Mr. Franzoy, in preparing his information, relied on reports from USGS. They are presently completing a study on Bosque Valley and did not feel at liberty to give him a copy of that. Frankly, I did not get there in time to remind him of the availability of that. They gave him an oral report indicating that there is very substantial amounts of water in Bosque Valley.

In Waterman Wash, there are completed USGS reports that are available. Based upon a reading and interpretation of those reports, there is, in his mind and mine, and I think in the minds of the community and the general farmers in the area as well, little question that adequate water can be developed from those sources.

What we show on this map is a proposed well field. I should say two: One at Waterman Wash and one at Bosque Valley. They are shown with major pipeline systems coming into the corner of the reservation.

That would be, in essence, what this bill will build.

Certain questions have been raised regarding some parts of the bill. I think it would be appropriate to address those.

The vertical scale on this graph means millions of dollars. The cost of the Bosque Valley well system and delivery system together is approximately \$15 million.

The cost of the Waterman Wash well and delivery system is about \$11.5 million. The cost of the common delivery system—that would be from the point where those two pipelines on the other map join together and deliver to Ak-Chin—is \$7.5 to \$8 million.

We put in a contingency fund for engineering and other expenses of that nature, including a feasibility study. It would approximate \$3.7 million.

I should mention to you also that Mr. Franzoy felt that a total feasibility study for the entire project should not exceed \$250,000, contrary to the estimates of the Bureau of Reclamation.

A couple of test wells drilled at each of these areas—and I will concede to this committee that, with all the studies that you can do in the world, no one knows for sure—but, a couple of test wells in each of the areas would be the feasibility study in terms of the substantial outlay of money. The rest of it would be somebody sitting down and figuring out dollarwise what it would cost.

Senator ABOUREZK. We always put in a "government factor."

Mr. HIRSCH. I am aware of that, and I think we can do it a lot cheaper.

The horizontal line here represents the annual cost projected for a 20-year period. The big yellow line in the middle is power costs. That was assumed at a 1½-cents cost per kilowatt hour of power. That is probably a little high, but probably realistic in terms of what the future portends.

The total cost of the project in terms of its capital expenditure would be approximately \$40 million. The O. & M. annual cost would be, at its initial point, I think, about \$3.7 million. It slowly would rise as power costs and the O. & M. on the wells and the conveyance systems increase. The repayment would remain constant.

I would point out to the committee that presently Ak-Chin is paying on a per-acre basis in the neighborhood of \$32 to \$34 per acre-foot depending upon fluctuating circumstances of water for delivery presently. If the initial cost of this bill were amortized over 50 years at no interest—and I recognize the problems with such a long amortization—the total cost of the water delivered under this bill, including the O. & M. charges, including power, would be significantly less. It would be in the range of \$29 to \$30 per acre-foot of water delivered to Ak-Chin.

I think it is fair also to tell the committee that, if we collapse that amount down to 20 years, where we are then. Well, frankly, including O. & M, power, including repayment of the total cost of the project of \$40 million at a 20-year period of amortization, we would be looking at something in the neighborhood of about \$40 per acre-foot; possibly a few dollars more than that. Frankly, that is not out of the ball park. There are a lot of farmers in that area that are paying that much for water. I think it is an acceptable amount to pay.

So, if you take the cost of this bill and reasonably amortize it over 20 years, then you are getting water for a relatively economical rate.

We have done, on our own, the cost benefit studies, the economic studies, the feasibility studies, the water studies. We think we have done the things that have to be done to be able to make an intelligent presentation to this committee and to answer any questions that you or the administration or anyone else may have.

Thank you.

Senator ABOUREZK. Thank you. That was a good presentation.

If this legislation is not passed, would you find it necessary to bring suit against the United States for breach of trust and against the surrounding non-Indian water users in an effort to bring a halt to the depletion of your groundwater basin?

Mr. HIRSCH. With reference to the second part of your question first, as you are aware, the United States is preparing a suit against non-Indian water users. It is anticipated to be filed, I think the Department testified a few minutes ago, within 30 to 60 days, something like that.

Senator ABOUREZK. So, that would obviate your suit against the Government?

Mr. HIRSCH. I doubt that it would, Senator. I do not think that we could get a bill passed and signed by the President before that suit was filed. It would, in effect, wind up dismissing that suit if the legislation subsequently went through.

With reference to a suit against the United States, we are not pressured by a statute of limitations.

Specifically answering your question, there is no question that the tribe would in fact sue the United States for these damages.

If I might add in that connection, the tribe is presently making an average of \$200 per acre net profit on each acre of land that it farms. If you deduct from that our expenses of present water costs, it comes out to about a little over \$250 per acre of net profit.

If you multiply that figure simply by the number of acres available to us, we wind up with very substantial prospective damages for each year the Government does nothing. Just as an exercise, I projected those damages 20 years in the future and wound up showing potential damages against the United States in excess of \$100 million, today to 20 years from today. Going backward of course, the damages would be also very significant. They go back some 63 years.

Senator ABOUREZK. What kind of crops are grown on the reservation?

Mr. HIRSCH. The principal crop is cotton; there are some grains that are grown. There is some hay occasionally as a rotating crop. But the big moneymaker is the cotton crop.

Senator ABOUREZK. Would you find acceptable an amendment to this bill to require a successful feasibility study prior to construction authorization?

Mr. HIRSCH. No; I do not think we would.

A successful feasibility study could be defined in too many different ways. It could be defined as the one that the Bureau of Reclamation uses. It could be defined as one that other departments within Government use.

I frankly cannot tell you, without looking at the exact requirements of such a feasibility study, whether or not we would be willing to accept it.

Senator ABOUREZK. How soon could you begin farming the additional acreage needed to use the water this bill would bring?

Mr. HIRSCH. We are presently farming 5,000. We could farm an additional 8,000 within, at the most, 8 to 12 months after receiving water and could subjugate and farm the rest of the reservation within 2 to 3 years.

Senator ABOUREZK. If we, for some reason, decided to specify a specific amount of money rather than an open-ended authorization, what figure would you recommend be inserted?

Mr. HIRSCH. There is only one area of the bill that we are unable to make a cost estimate for. That is the provision that non-Indians would be compensated for any damages due to pumping.

Based upon our studies, we feel that those damages would be very insignificant.

Assuming that those studies are correct and we put a small reserve aside, I think that a reasonable ceiling for this bill would be \$45 million, in today's dollars.

Senator ABOUREZK. Those are all the questions we have. We want to thank both of you for your appearance and your testimony.

Mr. HIRSCH. Thank you, Mr. Chairman.

Mr. CARLYLE. Thank you, Mr. Chairman.

Senator ABOUREZK. The hearing is adjourned.

[Whereupon, at 11.30 a.m., the hearing was adjourned.]



